

## **Preamble**

These terms and conditions of Esders Pipeline Service GmbH (hereinafter referred to as "Esders Pipeline Service") apply exclusively. Any general terms and conditions of business (e.g. terms and conditions of purchase) of the customer/client which conflict with or deviate from these General Terms and Conditions of Delivery and Sale shall not apply unless Esders Pipeline Service has expressly agreed to their application in writing. These General Terms and Conditions of Delivery and Sale shall also apply if Esders Pipeline Service carries out delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from the General Terms and Conditions. These terms and conditions shall also apply to all future contracts without the need for any further reference.

## **1. Subject of the contract**

1.1. In particular, Esders Pipeline Service provides its customers with planning, inspection, maintenance, cleaning, repair and rehabilitation work in and on pipelines. These General Terms and Conditions of Business apply to all contracts between Esders Pipeline Service and the customers/principals, even insofar as they do not relate to the subjects of the contract described in sentence 1 (delivery of other commercial goods).

1.2. Customers within the meaning of the General Terms and Conditions are both entrepreneurs and legal entities under public law.

1.3. Esders Pipeline Service is entitled to use third parties to perform the agreement.

## **2. Conclusion of contract**

2.1. Contractual offers made by Esders Pipeline Service, in particular the service statements headed "Offer", are subject to change without notice. If the customer intends to enter into a contractual relationship with Esders Pipeline Service, Esders Pipeline Service must accept this offer (order confirmation) after receipt of a corresponding declaration from the customer (e.g. order, placing of order), unless a separate contract text is issued. By placing the order, the customer assures his solvency and creditworthiness.

2.2. Esders Pipeline Service is entitled to accept a contractual offer from the customer (order, placing of order) within 14 days of receipt (entry). If the customer's contract offer is received electronically, a confirmation of receipt by the same means does not constitute a binding acceptance of the customer's contract offer.

2.3. Insofar as Esders Pipeline Service prepares statics calculations or other load-bearing capacity calculations during the preparation of planning services, the following applies: All calculations are - unless expressly stated otherwise in the respective contract - only example calculations without any binding character. Esders Pipeline Service does not guarantee the accuracy of the facts and calculations, nor the accuracy of the assumptions made in connection with any calculations.

2.4. Insofar as Esders Pipeline Service provides the technical documentation (assembly or installation instructions, operating instructions, maintenance instructions) illustrations, drawings, technical descriptions, production and functional sketches and other documents to the customer, the information provided therein is not binding on Esders Pipeline Service, unless Esders Pipeline Service expressly declares it to be the binding basis of the agreement.

2.5. Esders Pipeline Service retains ownership and copyright of illustrations, drawings, technical descriptions, production and functional sketches and other documents in the sense of technical documentation. Third party rights to these documents are not affected. The customer may only pass them on to third parties with our written consent, regardless of whether they are marked as confidential.

2.6. The conclusion of the contract is subject to correct and timely delivery by Esders Pipeline Service's suppliers. The customer will be informed immediately about the unavailability of the service. Any consideration will be refunded immediately. However, Esders Pipeline Service is entitled to conclude the contract by supplying components of adequate quality and price that can be obtained elsewhere.

2.7. The price calculations are based on the assumption that the items on which the quotation is based remain unchanged, that any necessary preparatory work or services by the customer have already been fully performed and that Esders Pipeline Service can provide its services without hindrance or interruption. The offers are based in each case on the performance description of the customer without knowledge of the local conditions. Esders Pipeline Service reserves the right to unilaterally adjust the contractual performance after conclusion of the contract if only so required by applicable safety regulations or other legal requirements or the function expected from the installation and the related components. Together with the notification to the customer, Esders Pipeline Service will inform the customer of the resulting price adjustment.

## **3. Service**

3.1. Unless otherwise agreed, the service shall be performed at the domestic address of the customer stated in the service description. Esders Pipeline Service is entitled to make partial deliveries and render partial services, provided this is reasonable for the customer. The customer shall ensure that the services can be properly provided at the agreed place of delivery at the scheduled time of performance.

3.2. Dates and deadlines are not binding unless Esders Pipeline Service designates them as fixed dates and assures compliance with them in writing. The prerequisite for meeting all deadlines is that the customer has handed over all necessary documents to be provided by him and has provided his own (preliminary) services. As far and as long as hindering circumstances (e.g. energy supply problems, strike or lockout, operational disruptions) occur, which make it considerably more difficult or impossible for Esders Pipeline Service or third parties commissioned by Esders Pipeline Service to provide the service, or if and for as long as the customer has not performed the cooperation acts incumbent upon him, Esders Pipeline Service is released from the obligation to meet the fixed delivery and service deadlines. It is also entitled to postpone the agreed fixed dates and deadlines for the expected duration of the impending circumstances. This does not apply insofar as Esders Pipeline Service is responsible for the impending circumstances. Esders Pipeline Service will inform the customer immediately after becoming aware of the hindering circumstances and their effect on the delivery/service.

## **4. Obligations of the customer**

4.1. The customer must provide Esders Pipeline Service with all information necessary for the execution of the order, make available the current plans of the pipeline systems and draw attention to special features, e.g. damage to or changes in the pipeline system, pipe runs with several bends, openings in the pipeline system, use of chemical pipe cleaning agents, materials that are particularly at risk during the execution of the order (plastic, lead, porous and aged material), pipe impurities known to him, such as adhesives, shards, concrete, gypsum, stones and roots, pumpability of the material covered by the agreement and, finally, previous cleaning attempts.

4.2. The customer guarantees Esders Pipeline Service that the pipeline system has been constructed, maintained and serviced in accordance with DIN standards, including compliance with the relevant local statutes. The customer shall put all sewers into the condition necessary for the execution of the order.

4.3. Unless otherwise agreed, the customer is obliged to provide a standpipe and to obtain permission for the extraction of process water. If this cannot be ensured by the customer before work

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begins, Esders Pipeline Service must be informed of this in writing. In case of doubt, the customer must inform Esders Pipeline Service. The disposal of the cleaning goods is always carried out by and at the risk and expense of the customer. The customer remains responsible for the disposal of waste within the meaning of the Krw-/AbfG even after it has been accepted by Esders Pipeline Service. The customer shall bear sole responsibility for any unloading and landfill areas allocated by the customer and shall indemnify Esders Pipeline Service against any claims by third parties.

4.4. The customer is obliged to ensure the arrival, installation and departure of the technical equipment of Esders Pipeline Service on a paved access road suitable for moving vehicles weighing up to 40 tonnes.

4.5. The customer owes preparatory civil engineering and shell construction work which is necessary for the performance of the service.

4.6. The customer shall obtain any necessary blocking permits and work authorizations at his own expense.

### 5. Payments

5.1. The remuneration for services provided by Esders Pipeline Service is based on the contract. The prices are subject to the applicable statutory value added tax. Esders Pipeline Service will issue an invoice to the customer showing the value added tax applicable at the time of invoicing. Unless otherwise agreed, payments shall be due in full upon acceptance of the service, but at the latest within 14 calendar days of receipt of the invoice, and shall be transferred without deduction to the account specified in the invoice. Standing times for which the customer is not responsible will be invoiced separately. Electricity and water are to be provided by the customer free of charge, as are ladders, scaffolding and similar aids.

5.2. In the case of contracts for work and services or contracts for work and materials, Esders Pipeline Service may demand appropriate partial payments for the services provided and make the continuation of work dependent on the payment of such partial payments.

5.3. The customer shall be in delay with payment 14 calendar days after acceptance of the service, at the latest, however, 14 calendar days after receipt of the invoice, unless the customer is not responsible for the circumstances relevant to the delay. In the event of delayed payment by a customer who is an entrepreneur, Esders Pipeline Service is entitled to charge interest on arrears at a rate of 9 percentage points above the applicable base rate (§ 247 BGB). Esders Pipeline Service is entitled to demand higher interest on arrears, provided that the amount of such interest is proven.

5.4. In the event of delayed payment by the customer or if circumstances become known after the conclusion of the contract which cast doubt on the creditworthiness of the customer, Esders Pipeline Service is entitled to declare the entire remaining debt of the customer under all contracts due for payment, to demand advance payments or the provision of security or to withdraw from the contract after the expiry of a reasonable period of time, without affecting other rights.

5.5. The customer may only offset against such claims that are undisputed or have been legally established.

5.6. In the event of the existence of defects, the customer shall not be entitled to a right of retention, unless this is in reasonable proportion to the defects and the anticipated costs of subsequent performance. The customer is only entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

### 6. Amendments of the contract

6.1. Each contracting party may request the other contracting party in writing to change the agreed scope of services. Upon receipt of a request for modification, the Recipient shall, within thirty (30) days, verify whether and under what conditions the modification is feasible and shall immediately notify the applicant in writing of its approval or rejection and, in the event of rejection, give reasons for the rejection.

6.2. If a change requested by the Client requires a comprehensive review, the necessary effort may be charged by Esders Pipeline Service in accordance with the current service price list at that time.

6.3. The contractual adjustments required for an amendment must be agreed in a written addendum to the contract.

6.4. As long as the contracting parties do not reach an agreement, Esders Pipeline Service will continue the work under the existing agreement without the corresponding amendment.

6.5. Subsequently agreed changes in the scope of services require a recalculation of any agreed fixed price or any agreed completion dates.

6.6. Esders Pipeline Service is entitled, without additional charge, to take account of technical developments and to change the system configuration if this serves to simplify or improve the system or is necessary for the execution of the agreement.

### 7. Acceptance

7.1. Acceptance refers exclusively to the services agreed in the contract for work and services.

7.2. Esders Pipeline Service will release the contractual property for use by the customer after completion of its services or, alternatively, issue the final invoice (hereinafter "handover"). Immediately after release for use or receipt of the final invoice, the Customer shall carry out the acceptance test and check that the technical specification and the contractual agreements are in accordance with the technical specifications.

7.3. If the services provided by Esders Pipeline Service correspond to the specified scope and any additional requests for changes or additions agreed between the parties to the contract, the customer shall declare acceptance without delay.

7.4. If the customer does not declare acceptance fourteen days after handover and has not notified Esders Pipeline Service of any significant defects in the meantime, the work shall be deemed to have been accepted after the fourteen days have expired.

7.5. Productive use of the work is also deemed to be acceptance.

7.6. Minor defects do not entitle the customer to refuse acceptance.

7.7. Defects are to be reported exclusively in writing.

### 8. Warranty

8.1. For a period of twelve (12) months from acceptance and, if partial acceptance has taken place, from partial acceptance, Esders Pipeline Service warrants that the work is free from defects that would render it unfit for its normal or presumed use under the contract.

8.2. If such defects occur after acceptance of the work, Esders Pipeline Service must be notified in writing within eight (8) days, stating the time of occurrence.

8.3. In the event of defective execution, Esders Pipeline Service will commence to remedy the defect immediately upon receipt of

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the written notification of defect and will carry out the remedy within a reasonable period of time.

8.4. The customer shall support Esders Pipeline Service in the identification of the defect, in particular the customer shall describe the occurrence of the defect in terms of time and circumstances explain the nature of the defect and indicate the effects of the defect. The customer shall grant Esders Pipeline Service access to the relevant documents.

8.5. If Esders Pipeline Service is unable to reproduce the defect with the assistance of the customer, the work shall be deemed to be free of defects in respect of the defect in question.

8.6. If Esders Pipeline Service does not succeed in rectifying the defect within a reasonable period of time and if Esders Pipeline Service also fails to rectify the defect within further reasonable periods of grace set by the customer to Esders Pipeline Service, the customer may demand the rescission of the agreement or a reduction of the remuneration in accordance with the statutory provisions.

8.7. The customer's warranty claims may no longer be asserted by the customer prior to the expiry of the warranty period if the customer itself or a third party has carried out modifications to the work without the prior written consent of Esders Pipeline Service, unless the customer proves that the defect would have occurred even without the modification.

8.8 If defects reported by the customer are not attributable to Esders Pipeline Service and the customer has not culpably misjudged this, the customer shall compensate Esders Pipeline Service for the time spent and the costs incurred (in particular travel expenses) at the usual rates in accordance with the current service price list.

### 9. Liability and compensation

9.1. In all cases of contractual and non-contractual liability, Esders Pipeline Service shall only pay damages or compensation for wasted expenditure

9.1.1. unlimited in the case of intentional behaviour;

9.1.2. in the event of gross negligence only to the amount of the typical foreseeable damage that was intended to be prevented by the breached obligation, but unlimited if the damage was caused by legal representatives or executives of Esders Pipeline Service;

9.1.3. in case of simple negligence only from breach of an essential obligation if the purpose of the contract is endangered thereby, only to the amount of the typical, foreseeable damage which should have been prevented by the obligation, but limited to € 250,000 per case of damage, in total not exceeding € 500,000 under the contract;

9.1.4. irrespective of the foregoing, in the absence of a condition for which Esders Pipeline Service has given a guarantee, in accordance with the guarantee conditions.

9.2. Except in cases of intent, Esders Pipeline Service does not accept any liability for the load and machinability of the pipe or sewer material or for damage due to undisclosed preloading of the material.

9.3. All claims against Esders Pipeline Service for damages or compensation for wasted expenditure in the case of contractual and non-contractual liability are subject to a limitation period of one year, except in cases of unlimited liability. The period of limitation shall commence at the time specified in § 199 (2) BGB. It shall enter into force at the latest upon expiry of the maximum periods specified in § 199 (3) and (4) BGB. The differently regulated period of limitation for claims due to material defects remains unaffected by the provisions of this paragraph. Similarly, the limitation period

of this paragraph shall not apply if § 634a para. 1 no. 2 BGB (structures and items for structures) provides for longer limitation periods.

### 10. Termination for cause

10.1. The contract for work and services shall commence on the date specified in it. If no date is specified, the contract for work and services begins on the working day following the day on which it is signed by the parties.

10.2. Esders Pipeline Service may terminate the contract for work and services for good cause. In particular, Esders Pipeline Service is entitled to terminate the contract without notice if the customer is more than one month in arrears with the payment of a due remuneration or if the Customer does not fulfil its obligation to cooperate.

### 11. Final provisions

11.1. The law of the Federal Republic of Germany shall apply. The place of performance and jurisdiction for claims arising from the contract is the registered office of Esders Pipeline Service, if the customer is a merchant. In this case, however, Esders Pipeline Service is also entitled to take legal action against the customer at the court of his place of residence.

11.2. Subsequent additions or amendments to contracts must be made in writing.

11.3. Should individual provisions of these terms and conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions.

11.4. Any amendments to these GTC will be announced via the Esders Pipeline Service website and will be deemed to have been accepted unless the customer objects to the amendment in writing. The Customer must send the objection to Esders Pipeline Service within six weeks of notification of the amendment.